

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant: Laurence D. Bell : Group Art Unit: 1761
Serial No. 10/761,632 : Examiner: Steven L. Weinstein
Filed: January 21, 2004 : Attorney Docket: 0091537.0513169
For: METHOD OF PRESERVING FRESH PERISHABLES

Commissioner for Patents

P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

In response to the office action, dated October 23, 2006, placing the above patent application under a restriction requirement, please consider the following remarks.

The Examiner has requested that Applicant elect between the following groups of claims which, he contends, define independent or distinct inventions:

- I. Claims 1-26: method for packaging fruit; and
- II. Claims 27-32: package capable of holding fresh-cut fruit.

Applicant respectfully traverses this restriction requirement. First, it is pointed out that the package defined in claims 27-32 is specifically designed for carrying out the method defined in claims 1-26. In particular, the atmosphere equilibration properties of the package are defined to fit in with the equilibration properties defined in the method claims. The alternative use for the package, proposed by the Examiner, is not realistic since one skilled in the art would not utilize a relatively expensive and intricate package to hold an item which does not require such a package and for which a less expensive, less complex package would serve equally well.


Second, MPEP § 803 indicates that even if an application includes two or more independent or distinct inventions, a restriction requirement is not appropriate if considering the inventions together would not place “a serious burden on the Examiner.” In this case, because of the clear similarities in terms of the properties defined in the method and the package claims, a complete search of the method claims would, by necessity, include most (if not all) of the search on the product claims. Accordingly, considering both groups of claims together would not place a serious burden on the Examiner and, hence, restriction is not proper under MPEP § 803.

For the reasons given above, it is submitted that the restriction requirement is improper and it is respectfully requested that it be withdrawn. In the event the restriction requirement is maintained, Applicant elects Group I (claims 1-26) for further prosecution in this application.

Respectfully submitted,

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